

IN THE COURT OF APPEALS OF TENNESSEE

**FILED**  
**December 23, 1996**  
**Cecil Crowson, Jr.**  
**Appellate Court Clerk**

BARBARA BRADLEY,  
as administratrix of the  
estate of PAUL J. BRADLEY,

Plaintiff-Appellant,

v.

DR. JOHN M. FOX,

Defendant-Appellee.

) C/A NO. 03A01-9607-CV-00232

)

)

)

)

)

) APPEAL AS OF RIGHT FROM THE

) MONROE COUNTY CIRCUIT COURT

)

)

)

)

)

) HONORABLE EARLE G. MURPHY,

) JUDGE

For Appellant

DAVID E. WAITE  
CLINT J. WOODFIN  
Brown & Waite  
Knoxville, Tennessee

For Appellee

DARRYL G. LOWE  
LISA A. LOWE  
Lowe, Shirley & Yeager  
Knoxville, Tennessee

OPINION

AFFIRMED AND REMANDED

Susano, J.

This dental malpractice case was brought by Barbara Bradley, administrator of the estate of her son, Paul J. Bradley, seeking damages for his wrongful death. Mr. Bradley, a 32-year-old diabetic, died as a result of Ludwig's Angina, a condition

which developed from a severe infection after his tooth was extracted by the defendant dentist, Dr. John M. Fox. Ms. Bradley alleges, among other things, that Dr. Fox failed to appropriately administer antibiotics to her son, and that this failure proximately caused the condition that led directly to his death. Following the close of Ms. Bradley's proof, the trial court directed a verdict in favor of Dr. Fox, on the ground that the plaintiff had not proven that Dr. Fox's failure to administer antibiotics was the proximate cause of Paul J. Bradley's death. Ms. Bradley appeals, raising the following question for our review:

Did the trial court commit reversible error in holding that a directed verdict was proper because no material disputed evidence existed from which the minds of reasonable people might conclude that Paul Bradley's injuries and death were proximately caused by defendant's negligence?

Dr. Fox raises the following additional issue:

Did the trial court err in allowing a general dentist to testify regarding Paul Bradley's cause of death, which requires a medical opinion?

I

Dr. Fox initially treated Mr. Bradley for a toothache. The patient registration statement completed by Mr. Bradley indicates that he informed Dr. Fox that he suffered from diabetes

2

and hepatitis. The form also contains a notation that Mr. Bradley was not taking medication for the diabetes. Mr. Bradley's sister testified, without objection, that his diabetes could be controlled by diet, and that he therefore was not required to take insulin or other medication. There is no further indication in Dr. Fox's records as to what, if any, additional information Mr. Bradley provided Dr. Fox with regard to the status of his diabetes.

Dr. Fox promptly extracted the afflicted tooth. His records do not reflect whether any antibiotics were administered before or during the extraction, or at any time on the day of the surgery, but they do indicate that he prescribed an antibiotic the day after the surgery.

Following the extraction, Mr. Bradley continued to experience problems in the same location. On the second day after his tooth was pulled, he was admitted to Sweetwater Hospital and diagnosed with acute bilateral neck cellulitis. He was then transferred to the University of Tennessee Medical Center in Knoxville, where he was further diagnosed as suffering from Ludwig's Angina, a life-threatening head and neck infection that is typically of dental origin. Mr. Bradley's condition continued to deteriorate, and he died three days later.

At trial, Ms. Bradley based her case primarily upon three sources<sup>1</sup>: the testimony of Dr. James McGivney, a doctor of

---

<sup>1</sup>There is no indication in the record that the defendant's deposition was taken. In any event, the plaintiffs do not rely on any such testimony in this case.

dental medicine, who testified as the plaintiff's expert; the deposition testimony of Dr. Jack E. Gotcher, a doctor of dental medicine and specialist in oral surgery and general anesthesia, who treated Mr. Bradley upon his admission to the University of Tennessee Medical Center; and the medical records from both hospitals and from Dr. Fox's office. The trial court determined that, taken together, this and other evidence presented by Ms. Bradley did not demonstrate that Dr. Fox's failure to administer antibiotics had proximately caused Mr. Bradley's death. The trial court accordingly directed a verdict in favor of Dr. Fox, and subsequently denied Ms. Bradley's post-trial motions.

## II

We review the trial court's grant of a directed verdict under the following well-established standards:

[i]n ruling on the motion, the court must take the strongest legitimate view of the evidence in favor of the non-moving party. In other words, the court must remove any conflict in the evidence by construing it in the light most favorable to the non-movant and discarding all countervailing evidence. The court may grant the motion only if, after assessing the evidence according to the foregoing standards, it determines that reasonable minds could not differ as to the conclusions to be drawn from the evidence. **Sauls v. Evans**, 635 S.W.2d 377 (Tenn. 1982); **Holmes v. Wilson**, 551 S.W.2d 682 (Tenn. 1977). If there is any doubt as to the proper conclusions to be drawn from the evidence, the motion must be denied. **Crosslin v. Alsup**, 594 S.W.2d 379 (Tenn. 1980).

**Eaton v. McLain**, 891 S.W.2d 587, 590 (Tenn. 1994).

According to T.C.A. § 29-26-115(a), the plaintiff in a medical malpractice action<sup>2</sup> has the burden of proving the following three elements:

(1) The recognized standard of acceptable professional practice in the profession and the specialty thereof, if any, that the defendant practices in the community in which he practices or in a similar community at the time the alleged injury or wrongful action occurred;

(2) That the defendant acted with less than or failed to act with ordinary and reasonable care in accordance with such standard; and

(3) As a proximate result of the defendant's negligent act or omission, the plaintiff suffered injuries which would not otherwise have occurred.

*Id.*; see also *Kilpatrick v. Bryant*, 868 S.W.2d 594, 597-98 (Tenn. 1993). The plaintiff cannot succeed without proving each of these elements. *Id.* at 598. As indicated earlier, this appeal is primarily concerned with whether Ms. Bradley satisfied her burden of proof on the third element, proximate cause.

To satisfy the proximate cause requirement, the plaintiff must establish that "it is more likely than not that the defendant's negligence caused plaintiff to suffer injuries which would have not otherwise occurred." *Id.* at 602 (quoting *Boburka v. Adcock*, 979 F.2d 424 (6th Cir. 1992)). Accordingly,

[t]he plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the

---

<sup>2</sup>By statute, a suit for dental malpractice is encompassed within the definition of a medical malpractice action. See T.C.A. § 29-26-102(4),(6).

conduct of the defendant was a cause in fact of the result. A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant....

**Kilpatrick**, 868 S.W.2d at 602 (quoting **Lindsey v. Miami Dev. Corp.**, 689 S.W.2d 856, 861-62 (Tenn. 1985)). With regard to a medical malpractice action, the Supreme Court in **Kilpatrick** further stated that

proof of causation equating to a "possibility"... is not sufficient, as a matter of law, to establish the required nexus between the plaintiff's injury and the defendant's tortious conduct by a preponderance of the evidence in a medical malpractice case. Causation in fact is a matter of probability, not possibility, and in a medical malpractice case, such must be shown to a reasonable degree of medical certainty. (citation omitted).

**Id.** at 602. The probability aspect of proximate cause thus requires that there be "greater than a 50 percent chance" that the defendant's negligent acts or omissions were the cause in fact of the plaintiff's injuries. **Volz v. Ledes**, 895 S.W.2d 677, 679 (Tenn. 1995).

Against this background, we turn to the question of whether Ms. Bradley established that Dr. Fox's negligence proximately caused the death of her son.

We shall first review what was proven by Ms. Bradley on the issue of causation. The following pertinent facts were established by the medical records and the testimony of various witnesses: (1) Paul Bradley was a diabetic; (2) Mr. Bradley informed Dr. Fox that he was a diabetic but that he was not taking medication; (3) Dr. Fox extracted the tooth that was the source of Mr. Bradley's pain; (4) Dr. Fox prescribed antibiotics for Mr. Bradley on the day after the extraction; (5) following the surgery, Mr. Bradley developed a severe infection that led to Ludwig's Angina; and (6) Mr. Bradley died as a result of this affliction. In addition, the expert testimony indicates that the applicable standard of care required taking an adequate medical history, determining whether the diabetes was under control, and administering antibiotics at least after the surgery was performed.

The evidence is much less complete in other respects. For instance, although it was assumed in certain questions and answers at trial, there is no actual testimony that Dr. Fox did not administer antibiotics to Mr. Bradley at the time of the extraction. In addition, the expert testimony is unclear as to exactly when, under the particular circumstances of this case, antibiotics *should* have been administered. Dr. Gotcher testified that a dentist should, at a minimum, give a diabetic patient antibiotics "after the surgery [is] done." However, it is unclear whether he meant *immediately* "after", or at some other unspecified time following the surgery. He also testified that it would be a breach of the standard of care to not at least give the patient a "prescription for oral antibiotics to be taken

after the surgery was done." Applying this statement to the facts at hand, Dr. Fox would appear to have met the standard of care, since he did prescribe antibiotics to Mr. Bradley the day after the surgery. Given the absence of expert testimony as to precisely when antibiotics should have been provided, we cannot determine whether this prescription was given too late, or whether a failure to prescribe it at the appropriate time contributed to the progression of Mr. Bradley's infection. Furthermore, the record offers no indication as to whether Mr. Bradley even filled the prescription or took the medication as directed.

Dr. McGivney stated that, had antibiotics been administered prior to the extraction, "I don't think he would have -- that infection would have progressed to cause him Ludwig's Angina." However, he could not explain the mechanism by which the tooth extraction allegedly advanced the infection. Dr. McGivney did not testify as to a particular point at which the standard of care required Dr. Fox to administer antibiotics. He did acknowledge that Dr. Fox had prescribed an antibiotic on the day after the surgery, but he never testified that Dr. Fox had breached the standard of care by waiting until then to do so.

The record is also unclear as to the status of Mr. Bradley's diabetes and the extent of Dr. Fox's specific knowledge thereof. Both Dr. Gotcher and Dr. McGivney testified to the importance of determining the degree of control that a diabetic patient has over his condition. Each stated that the particular procedures to be followed in caring for such a patient are

predicated upon a finding of whether the patient's diabetes is "controlled" or "uncontrolled." Again, the record offers little guidance as to whether Dr. Fox made such an assessment, and if so, into which category he placed Mr. Bradley. Thus, while the record contains extensive testimony regarding the standard of care for diabetic patients in alternate scenarios, we do not have the facts necessary to determine which scenario is present in this case. Without these facts, we cannot determine which standard is applicable to the case at hand. This deficiency precludes a finding that Dr. Fox violated the applicable standard of care.

Leaving aside the question of the relevant standard of care, we have determined that the evidence before us does not establish that negligence on the part of Dr. Fox proximately caused Paul Bradley's injuries and death. There is no proof that Dr. Fox failed to administer antibiotics to Mr. Bradley at the proper time or in the proper manner. Given the insufficiency of such evidence in the record, we can draw no negative conclusions about the treatment provided by Dr. Fox.

To establish proximate cause in this particular case, Ms. Bradley was required to demonstrate that it is more likely than not that the failure to give antibiotics at the appropriate time or in the proper manner was the proximate cause of the Ludwig's Angina that caused Mr. Bradley's death. See **Volz v. Ledes**, 895 S.W.2d 677, 679 (Tenn. 1995); **Kilpatrick v. Bryant**, 868 S.W.2d 594, 602 (Tenn. 1993). The record contains no such proof. Although the evidence supports the *possibility* of

causation, a mere possibility

is not sufficient, as a matter of law, to establish the required nexus between the plaintiff's injury and the defendant's tortious conduct by a preponderance of the evidence...

*Id.* at 602.

We therefore find that the trial judge properly directed a verdict in favor of Dr. Fox on the ground that Ms. Bradley had not proven that a failure to administer antibiotics was the proximate cause of Paul Bradley's death.

In view of our disposition of this issue, we deem it unnecessary to address the additional issue raised on this appeal by Dr. Fox.

The judgment of the trial court is affirmed. Costs on appeal are assessed to the appellant and her surety. This case is remanded to the trial court for collection of costs assessed there, pursuant to applicable law.

---

Charles D. Susano, Jr., J.

CONCUR:

---

Houston M. Goddard, P.J.

---

Don T. McMurray, J.